

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
LINDI DEMANES,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 1998SA0474
)	EEOC NO: 21B981028
THE LOWEN GROUP)	ALS NO: S-10943
INTERNATIONAL, INC. d/b/a)	
SWAN LAKE MEMORY GARDENS,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On May 3, 2001, an Order was entered that required the parties to address whether the Commission could continue to exercise jurisdiction over this matter once Complainant had executed a settlement agreement in Bankruptcy Court with respect to this claim. Respondent submits that this case is ripe for dismissal since Complainant agreed to settle this matter in exchange for an unsecured claim against Respondent's bankruptcy estate. Complainant, however, maintains that the terms of the settlement agreement preclude dismissal of the case at this time.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On January 20, 1998, Complainant filed on her own behalf a Charge of Discrimination, alleging that she was the victim of sex, age and religious discrimination, sexual harassment and retaliation when Respondent subjected Complainant to anti-female, anti-age and anti-religion comments and sexual harassment. Complainant further alleged that she was constructively discharged from her position.

2. On July 26, 1999, the Department of Human Rights filed a Complaint on behalf of Complainant, alleging that Complainant was the victim of sex, age, and religious discrimination, sexual harassment and retaliation when Respondent subjected Complainant to anti-female, anti-age and anti-religion comments and sexual harassment, and that Complainant was constructively discharged from her position.

3. On August 13, 1999, an Order was entered which stayed this proceeding due to Respondent's filing of a Chapter 11 Bankruptcy petition and directed the parties to file periodic status reports.

4. On May 3, 2001, Respondent filed a status report indicating that the parties had entered into a settlement agreement through an Alternative Dispute Resolution procedure adopted by the Bankruptcy Court, and that under the terms of the settlement agreement Complainant agreed to settle her claims in return for an unsecured non-priority claim in Bankruptcy Court in the amount of \$56,700. Complainant also agreed to cooperate with Respondent in securing a dismissal with prejudice of any pending administrative claims, including the claim pending before the Human Rights Commission.

5. On May 3, 2001, an Order was entered which required Complainant to file a response that addressed the question of whether, under **Watkins and State of Illinois, Department of Corrections**, ___ Ill. HRC Rep. ___ (1990CF1303, June 2, 1999), the Commission continued to have jurisdiction over this case due to the existence of the parties' settlement.

6. Complainant thereafter filed a response, agreeing that the parties had settled this case, but arguing that dismissal of the case was not appropriate until she had been paid her unsecured, non-priority claim in the amount of \$56,700. Respondent has not filed a reply to Complainant's response.

Conclusion of Law

1. The Commission lacks jurisdiction to enforce terms of a private settlement.

Discussion

In Watkins and State of Illinois Department of Corrections, ___ Ill. HRC Rep. ___ (1990CF1303, June 2, 1999), the Commission considered an issue as to whether it could enforce the terms of an oral settlement that included a payment of \$40,000 from the respondent to the complainant. After rejecting complainant's contention that the parties had not made a viable settlement agreement, the Commission concluded that it did not have jurisdiction to enforce the agreement and dismissed the case after noting that the parties had agreed to drop the case in exchange for adequate consideration. Significantly, the Commission did not set any precondition regarding the actual payment of the settlement figure prior to the dismissal of the case.

In this case, the parties have not contended that there is any ambiguity with respect to the terms of the settlement. Here, the record shows that the Complainant agreed to release her claims against Respondent in exchange for an unsecured, non-priority claim in the amount of \$56,700 in the bankruptcy proceeding. Moreover, while it is true that Complainant has not been paid this amount, it would seem that under Watkins, Complainant's remedy would be some sort of civil action to enforce the terms of the settlement agreement, rather than the resumption of this lawsuit against an otherwise bankrupt employer who sought relief from the Bankruptcy Court.

Complainant, though, submits that dismissal of the case at this time is inappropriate since the language in the settlement agreement refers to her receipt of the "reconciled" amount of \$56,700, and maintains that until her unsecured, non-priority claim has been paid, it has not been reconciled. Additionally, Complainant contends that it would defy logic to find that the only consideration she obtained in the settlement was an unsatisfied, unsecured non-priority claim in a reconciled amount of \$56,700. The problem, however, with Complainant's argument is that she cannot provide any time frame for obtaining any payment on her claim. Indeed, one of the possible outcomes of Complainant's settlement with

Respondent's bankruptcy estate is that she will never receive any money on her Human Rights Act claim due to lack of funds after other creditors have been satisfied. Thus, if Complainant's stance were adopted, her claim could never be dismissed from the Commission's docket because only payment of her claim could trigger any requirement on her part to file a motion to dismiss her claim. Complainant cites to no legal authority requiring administrative agencies to continue cases on their dockets under these circumstances, and I would note that Watkins did not condition its dismissal of complainant's cause of action on any actual payment of the settlement.

Finally, Complainant suggests that a dismissal of her claim at this time is inappropriate because it would lessen her leverage on Respondent to pay the actual agreed settlement amount. Complainant, however, ignores that fact that she already has a remedy with the Bankruptcy Court should she believe that Respondent has breached any part of the settlement agreement. Indeed, under Watkins, it is the existence of the agreement itself, and not the satisfaction of the settlement, that deprives the Commission of any jurisdiction to continue with Complainant's case.

Recommendation

For all of the above reasons, I recommend that the Complainant and underlying Charge of Discrimination of Lindi Demanes be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 3rd DAY OF SEPTEMBER, 2002